

OCA Record

LEG

OCA 87-2227

20 May 1987

MEMORANDUM FOR: Director of Personnel
Deputy Director for Policy, Analysis &
Evaluation/OP
Chief, Administrative Law Division/OGC

FROM: Legislation Division
Office of Congressional Affairs

SUBJECT: Reimbursement for Expenses Incurred in Sale or
Purchase of Residence, H.R. 987

1. Attached for your review and comment is a proposed views letter by the Department of State on H.R. 987 regarding reimbursement to Federal employees for expenses of selling and purchasing a residence, along with a copy of that bill. The Department opposes the bill because it appears to provide free housing for foreign service and to provide reimbursement for expenses incurred in selling or buying a home in the United States. Also, the Department believes a movement would begin to institute these benefits for all Federal employees located overseas.

2. Please refer your comments to me no later than 28 May 1987 so that I may respond to the Office of Management and Budget in a timely fashion. You may telephone me on secure 37914 if you have any questions.

Attachments

Distribution:

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OCA/Leg (20 May 87)

United States Department of State



Washington, D.C. 20520

Dear Madam Chairwoman:

I have your letter dated March 18, 1987, requesting a report on H.R. 987 "To amend title 5, United States Code, to liberalize certain provisions authorizing reimbursement for expenses of sale and purchase of a residence upon the transfer of a Federal employee."

The proposed amendment would permit reimbursement to employees of expenses required by the sale of a residence (or for the settlement of an unexpired lease) at an official duty station from which the employee was transferred when assigned to a foreign area. The amendment would also allow for the reimbursement of expenses related to the purchase of a residence when the employee was transferred in the interest of the Government from a foreign area to a non-foreign area other than the official duty station from which the employee was transferred to the foreign area. As drafted, this amendment would be retroactive to January 1, 1979.

This proposed legislation would amend 5 U.S.C. 5724a(a)(4) and appears to increase substantially the benefits already available to civilian employees transferred to foreign duty stations. Employees transferred to foreign areas are generally eligible for free Government-provided quarters or a living quarters allowance for rent, heat, light, fuel, electricity, gas and water under 5 U.S.C. 5923(2). Where employees choose to purchase homes in foreign areas, Section 136 of the Standardized Regulations (Government Civilians, Foreign Areas) permits employees to recoup up to 100 percent of the purchase price of their foreign homes. The Government housing and the living quarters allowances provided these employees abroad are not subject to U.S. Federal income tax.

The Honorable
Cardiss Collins, Chairwoman,
Subcommittee on Government Activities and
Transportation,
Committee on Government Operations,
House of Representatives.

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An employee's decision to retain an existing home in the United States or purchase one abroad or upon reassignment to another location in the United States is a personal decision based on individual family circumstances. As the housing expenses of the employee abroad are substantially or fully covered by the U.S. Government, the retention of a home in the U.S. is not required by a foreign assignment. A decision to retain a home in the U.S. is generally investment related, based on an employee's expectation of home appreciation rates or the rental value of the property involved. It does not appear reasonable for an employee to be reimbursed for selling expenses of a residence that has been retained essentially as investment property with substantial income value and tax deduction benefits. It should also be noted that the tax regulations were revised a few years ago to permit a reasonable suspension of the two-year replacement period for avoiding Federal taxes on income received from the sale of a principal home while the employee's tax home is outside the U.S.

It appears to us that by providing basically free housing in a foreign area, the Government has fairly enabled the employee to avoid unreasonable housing expense due to the transfer to a foreign duty station. The current legislation reimburses homeowners for residence sale and purchase expense when both the old and the new duty stations are within the U.S. It appears unnecessary for the Government to provide both free housing for foreign service and, at the same time, retain an obligation to cover the expenses of selling a former residence or purchasing a new home in the U.S. For the reasons stated, the Department is opposed to the provisions of H.R. 987.

The proposed amendment to title 5 United States Code 5724a(a)(4) would not specifically affect the benefit program maintained for employees under the Department's Government-wide Standardized Regulations or the Foreign Affairs Manual. However, as relocation allowances under these regulations currently parallel those provided under title 5 United States Code 5724, there would be considerable pressure from employee unions and others to establish comparable benefits for all foreign-based employees. The authority for the Department's foreign transfer allowances is title 5 United States Code 5924(2) and section 901(14) of the Foreign Service Act of 1980, as amended.

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The Office of Management and Budget advises that from the standpoint of the Administration's program, there is no objection to the submission of this report.

With best wishes,

Sincerely,

J. Edward Fox
Assistant Secretary
Legislative and Intergovernmental Affairs

100TH CONGRESS
1ST SESSION

H. R. 987

To amend title 5, United States Code, to liberalize certain provisions authorizing reimbursement for expenses of sale and purchase of a residence upon the transfer of a Federal employee.

IN THE HOUSE OF REPRESENTATIVES

FEBRUARY 4, 1987

Mr. HUGHES introduced the following bill; which was referred to the Committee on Government Operations

A BILL

To amend title 5, United States Code, to liberalize certain provisions authorizing reimbursement for expenses of sale and purchase of a residence upon the transfer of a Federal employee.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*
3 That section 5724a(a)(4) of title 5, United States Code, is
4 amended—

5 (1) by inserting before the period at the end of the
6 first sentence the following: “; and expenses required
7 to be paid by the employee, (A) of the sale of the resi-
8 dence (or the settlement of an unexpired lease) of the

1 employee at the official station from which the employ-
2 ee was transferred when he was assigned to a post of
3 duty located outside the United States, its territories or
4 possessions, the Commonwealth of Puerto Rico, or the
5 Canal Zone, and (B) of the purchase of a residence at
6 the new official station when the employee is trans-
7 ferred in the interest of the Government from a post of
8 duty located outside the United States, its territories or
9 possessions, the Commonwealth of Puerto Rico, or the
10 Canal Zone, to an official station (other than the offi-
11 cial station from which he was transferred when as-
12 signed to the foreign tour of duty) within the United
13 States, its territories or possessions, the Common-
14 wealth of Puerto Rico, or the Canal Zone"; and

15 (2) by adding at the end thereof the following new
16 sentence: "Reimbursement of expenses prescribed
17 under this paragraph in connection with transfers from
18 a post of duty located outside the United States, its
19 territories or possessions, the Commonwealth of Puerto
20 Rico, or the Canal Zone, shall not be allowed for any
21 sale or settlement of unexpired lease or purchase trans-
22 action that occurs prior to official notification that the
23 employee's return to the United States would be to an
24 official station other than the official station from

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1 which the employee was transferred when assigned to
2 the foreign post of duty.”.

3 SEC. 2. The amendments made by the first section of
4 this Act shall be applicable with respect to any employee
5 transferred to or from a post of duty on or after January 1,
6 1979.

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HF 98- IF